

REMARKS

Claims 1-6 are pending herein.

Claims 5 and 6 have been allowed. Claim 3 has been amended to depend from allowed claim 6 so that it and claim 4 which depends therefrom should now be in condition for allowance.

Reconsideration of the rejection of claims 1 and 2 under §103(a) as obvious over the U.S. patent to Diaz et al No. 5,890,128 ("Diaz") in view of the U.S. patent to Yoshimura et al No. 5,989,200 ("Yoshimura") is courteously requested.

As set forth in the prior Amendment, determinations of obviousness are to be made in accordance with the decision of the Supreme Court in *Graham v. John Deere*, 383 US 1, 148 USPQ 459 (1966). Under *Graham*, the scope and content of the prior art are determined, the differences between the prior art and the claimed invention are ascertained, and secondary considerations such as commercial success and solving a long felt need are to be considered where evidence thereof is available.

Diaz discloses a calorie computer which tracks calorie input and deducts calorie output as a function of activities performed by an individual on a daily basis. Yoshimura et al discloses an exercise amount measuring device which displays the amount of exercise to be performed further based upon ingested calories and consumed calories. In Yoshimura, the ingested calories for food items must be entered into the memory by the user as shown in Figs. 21 A and 21B.

The combined teachings of Diaz and Yoshimura are not food specific and thus do not render the invention obvious. With the claimed invention, a certain food can be related to a specific exercise. The invention calculates the burn rates for that specific food and that specific exercise. Yoshimura only totals daily calories consumed. The claimed invention allows the user

to determine food by food whether it is a good choice or a bad choice as it relates to exercise time/duration so that the user can determine whether to eat that certain food item. Yoshimura's device determines a life activity intensity level ranking to be performed against calories consumed.

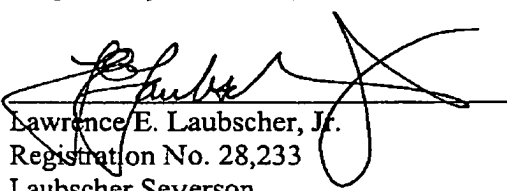
In addition to the differences between the claimed invention and the cited prior art, the claimed invention has achieved commercial success. Submitted herewith are redacted copies of orders placed for the invention. These total 50,000 devices. Coupled with the evidence of solving a long felt need previously submitted, this evidence of the secondary factors to be considered in an obviousness determination under the *Graham* analysis establishes that the claimed invention is not obvious.

For all the foregoing reasons, there is no disclosure of teaching in either Diaz or Yoshimura which discloses or teaches anything which would have suggested applicant's presently claimed invention to one of ordinary skill in the art. Further, there is no disclosure or teaching in Diaz or Yoshimura which suggest the desirability of combining any portions thereof effectively to anticipate or suggest applicant's presently claimed invention. Accordingly, reconsideration and withdrawal of the §103(a) rejection are respectfully requested.

Allowance of claims 1-4 is courteously requested.

Respectfully submitted,

November 30, 2004

  
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